

# Regulatory Matters – Can you impact anything?

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## **Outline + Mission**

### **Outline:**

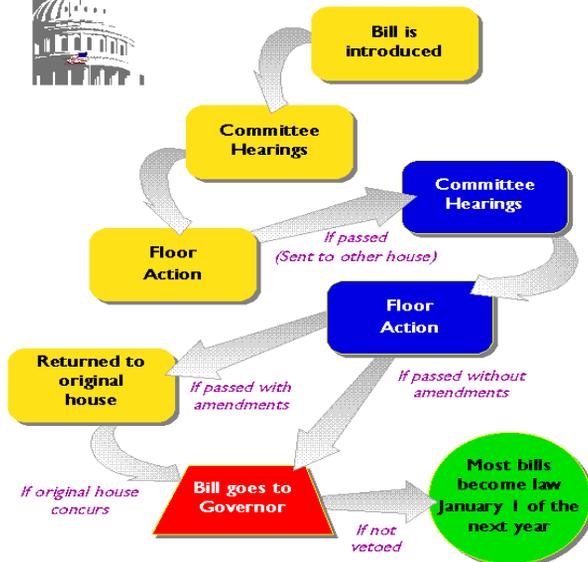
- 1. Statutory and Regulatory Intervention**
- 2. TLV case exercise**

### **Mission:**

**To respond to regulatory/statutory matters by trying to understand and participate in the process for your organization.**



## How a Bill Becomes a Law



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## First Amendment to the United States

### Constitution:

**“Congress shall make no law...abridging the freedom of speech...or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”**

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## Drafting of Safety/Environmental Regulations:

- **Simple means of describing requirements**
- **Compliance monitoring methods**
- **Inspection targeting techniques**
- **Imposition of penalties**

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## Types of lobbying groups

- **Industries and Trade Associations**
- **Not-for-Profit Public Interest Groups**
- **Scientific and Research Organizations**

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## Effective Lobbying Is Getting Votes

(from 21 Fundamentals for Effective State Legislature Lobbying by Robert Guyer, Esq.)

- **One size doesn't fit all. Tailor your lobbying to the needs of that targeted lawmaker whose vote you are trying to get at that moment**
- **There are no unimportant staff. You may not need a staff person's support, but you can't afford his or her opposition**
- **Coalitions exist for advantage – not love, loyalty or debt**
- **Most contract lobbyists have very little personal political power. Don't confuse an ability to say "Hi" to lawmakers with the ability to get the lawmakers' votes**
- **Nobody cares about your issue as much as you do and nobody can win your issue for you. If you don't make it happen, it won't.**

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## Brief Safety Regulatory History

- **State initiatives**
  - industrial safety laws
  - workers compensation
- **Federal initiatives**
  - Coal mine legislation in 1891
  - Public Health Service in 1902
  - Walsh-Healy Public Contracts Act in 1936
  - Fair Labor Standards Act in 1938

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## Leading up to the OSHAct

- **Metal and Nonmetallic Mine Safety Act of 1966 was first significant federal step by Congress**
- **In January 1968, President Johnson proposed the first comprehensive occupational health and safety program**
- **In 1970, Congress passed the OSHAct signed into law by President Nixon**

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## Development of OSHA Standards

- **Section 6(a) – two year window for national consensus standards**
- **Section 6(b) – notice and comment rulemaking – includes notice, hearings, written record, post hearing comments and final rulemaking**
- **Section 6(c) – emergency temporary standards**

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## Compliance Strategies

- **Full compliance**
- **Substantial compliance**
- **“Pick and Choose” compliance**
- **Non-compliance**

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## Big Compliance Experience

- **\$300,000,000 proposed EPA Clean Water Act Fine**
- **Multiple Facilities, Multiple Violations X Daily Penalties**
- **Two years of Negotiations with US EPA and US DOJ**
- **Settlement agreed to by all parties – included a Supplemental Environmental Project (SEP)**
- **Key compliance items included increasing the size of the environmental staff and developing an Environmental Management System (EMS)**
- **Close review of program including environmental audits**

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## OSHA: Key Areas to Address Workplace Hazards at 40<sup>th</sup> Anniversary – Mr. Michaels

- **More Inspections**
- **Larger fines**
- **Regulation by shaming**
- **Inspectors will interview employees**
- **More checks on employee training**
- **Injury and Illness Prevention Programs required**
- **Closer look at safety incentive programs**
- **Quicker development of new regulations**
- **Electronic workplace records to be required**
- **Strengthen State OSHA programs**
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### Notice/Comments:

#### ANPRS and NPRMS

- **Advance Notice of Proposed Rulemaking (ANPR) and Notice of Proposed Rulemaking (NPRM) are published in the Federal Register**
- **Standard format**
  - **Summary**
  - **Supplemental information: technical information, hazard analysis, feasibility analysis, illness/injury data**
  - **text of proposed standard**

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## Developing Effective Comments

- Standing – direct impact of proposed new rule
- Major Issues – most significant impact on your organization; respond by using factual materials
- Specific Concerns – direct impact to operations; cite to specific sections of the proposed regulations
- Cost Effectiveness and Consequences – costs and benefits of proposed new rule
- Alternatives – possible alternatives that could achieve the same objective
- Regulatory Docket Number – correct location for making comments

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## Legal Challenges to OSHA Standards

- **Under Section 6(f) of the OSHAct, any aggrieved party may challenge a standard by filing a petition within 60 days with the appropriate US Court of Appeals**
- **Can wait for an inspection and citation**

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## Measurements of Regulatory Success

- **Successful integration of environmental/occupational health/safety position into law/regulations**
- **Defeat, modification or passage of specific legislation or rulemaking**
- **Lack of OSHA citations or EPA violations**
- **Successful challenge of OSHA citation or EPA violation**
- **Sustainable national interest – e.g. protection of working men/women from illness/injuries; protection of the environment**

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## OSHA: Beyond Politics

**How should OSHA regulate?  
What is OSHA allowed to do?**

- **Enforcement**
- **Cooperative programs**
- **Information and education**

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